

SENATE BILL No. 399

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-14-1.5-2; IC 36-8.

Synopsis: Collective bargaining. Allows the police officers and firefighters of a unit (a county, city, town, or township) to bargain collectively with an employer through an exclusive representative. Requires the Indiana education employment relations board to implement the collective bargaining law. Specifies the rights and duties of employees and employers in collective bargaining. Provides for the recognition of exclusive representatives, payroll deductions, complaint proceedings before the board, judicial review of complaints, mediation, and arbitration. Prohibits lockouts and strikes. Provides that an agent appointed by a unit to conduct collective bargaining for the unit is not a "governing body" for open door law purposes. (Current law provides that the agent appointed by a school corporation to conduct collective bargaining is not a "governing body" for this purpose.)

Effective: July 1, 1999.

Craycraft

January 11, 1999, read first time and referred to Committee on Pensions and Labor.



Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 399

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-14-1.5-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. For the purposes of
3 this chapter:

4 (a) "Public agency" means the following:

5 (1) Any board, commission, department, agency, authority, or
6 other entity, by whatever name designated, exercising a portion of
7 the executive, administrative, or legislative power of the state.

8 (2) Any county, township, school corporation, city, town, political
9 subdivision, or other entity, by whatever name designated,
10 exercising in a limited geographical area the executive,
11 administrative, or legislative power of the state or a delegated
12 local governmental power.

13 (3) Any entity which is subject to either:

14 (A) budget review by either the state board of tax
15 commissioners or the governing body of a county, city, town,
16 township, or school corporation; or

17 (B) audit by the state board of accounts.

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(4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) The Indiana gaming commission established by IC 4-33, including any department, division, or office of the commission.

(7) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

(b) "Governing body" means two (2) or more individuals who are:

(1) a public agency that:

(A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and

(B) takes official action on public business;

(2) the board, commission, council, or other body of a public agency which takes official action upon public business; or

(3) any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated. An agent or agents appointed by a school corporation **or a unit** to conduct collective bargaining on behalf of that school corporation **or unit** does not constitute a governing body for purposes of this chapter.

(c) "Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. It does not include:

(1) any social or chance gathering not intended to avoid this chapter;

(2) any on-site inspection of any project or program;

(3) traveling to and attending meetings of organizations devoted to betterment of government; or

(4) a caucus.

(d) "Official action" means to:

(1) receive information;

(2) deliberate;

(3) make recommendations;

(4) establish policy;

(5) make decisions; or

(6) take final action.

(e) "Public business" means any function upon which the public agency is empowered or authorized to take official action.



(f) "Executive session" means a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose.

(g) "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order.

(h) "Caucus" means a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action.

(i) "Deliberate" means a discussion which may reasonably be expected to result in official action (defined under subsection (d)(3), (d)(4), (d)(5), or (d)(6)).

(j) "News media" means all newspapers qualified to receive legal advertisements under IC 5-3-1, all news services (as defined in IC 34-6-2-87), and all licensed commercial or public radio or television stations.

(k) "Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

SECTION 2. IC 36-8-20 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:

Chapter 20. Collective Bargaining Between Local Government Employers and Police Officers and Firefighters; Definitions

Sec. 1. The definitions in this chapter apply throughout this chapter, IC 36-8-21, IC 36-8-22, IC 36-8-23, and IC 36-8-24.

Sec. 2. "Bargain collectively" means to perform the obligation of an employer (through the employer's executive or the executive's designee) and of the designee of the exclusive representative to do the following:

(1) Meet at reasonable times, including meetings in advance of the budget making process.

(2) Negotiate in good faith concerning the following:

(A) Wages.

(B) Salaries.

(C) Hours.

(D) Salary and wage related benefits.

(E) All other terms and conditions of employment, including health and safety conditions.

(3) Execute a written contract incorporating an agreement if a written contract is requested by either party.

Sec. 3. "Bargaining unit" means the full-time employees of a



1 police or fire department. The term does not include a person in an
 2 upper level policy making position (as defined in IC 36-8-1-12),
 3 except a person in an upper level policy making position included
 4 in an agreement in effect on July 1, 1999.

5 Sec. 4. "Board" refers to the Indiana education employment
 6 relations board established by IC 20-7.5-1-9.

7 Sec. 5. "Complainant" means an employer, employee, employee
 8 organization, or exclusive representative that files a complaint with
 9 the board under IC 36-8-22.

10 Sec. 6. "Employee" means a person who may be in a bargaining
 11 unit.

12 Sec. 7. "Employee organization" means an organization in
 13 which an employee participates and that exists to deal with an
 14 employer concerning any of the following:

- 15 (1) Grievances.
- 16 (2) Labor disputes.
- 17 (3) Wages.
- 18 (4) Rates of pay.
- 19 (5) Hours of employment.
- 20 (6) Employment conditions.

21 Sec. 8. "Employer" means the following:

- 22 (1) A unit to which IC 36-8-21 applies.
- 23 (2) A person designated by the unit to act in the unit's
 24 interests in dealing with employees.

25 Sec. 9. "Exclusive representative" means an employee
 26 organization that is:

- 27 (1) certified under IC 36-8-21 by the board; or
- 28 (2) recognized by the employer as the exclusive representative
 29 of the employees in a bargaining unit.

30 Sec. 10. "Respondent" means a person against whom a
 31 complainant files a complaint under IC 36-8-22.

32 Sec. 11. "Strike" includes concerted:

- 33 (1) willful absence from the employee's position;
- 34 (2) stoppage of work; or
- 35 (3) abstinence in whole or in part from the full and proper
 36 performance of the duties of employment.

37 SECTION 3. IC 36-8-21 IS ADDED TO THE INDIANA CODE AS
 38 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 39 1, 1999]:

40 Chapter 21. Collective Bargaining Between Local Government
 41 Employers and Police Officers and Firefighters; Employee
 42 Organizations



1 **Sec. 1.** This chapter, IC 36-8-22, IC 36-8-23, and IC 36-8-24
2 apply to all units.

3 **Sec. 2.** The board shall implement this chapter, IC 36-8-22,
4 IC 36-8-23, and IC 36-8-24. Powers granted to the board under
5 IC 20-7.5-1-9 are extended to the administration of this chapter,
6 IC 36-8-22, IC 36-8-23, and IC 36-8-24.

7 **Sec. 3.** Employees may do the following:

- 8 (1) Form, join, or participate in employee organizations.
- 9 (2) Participate in collective bargaining with the employer
10 through representatives of the employee's own choosing.
- 11 (3) Engage in other activities, individually or in concert, to
12 establish, maintain, or improve the following:
- 13 (A) Salaries.
- 14 (B) Wages.
- 15 (C) Hours.
- 16 (D) Salary and wage related fringe benefits.
- 17 (E) All other terms and conditions of employment,
18 including health and safety conditions.

19 **Sec. 4.** An employer shall manage and direct the employer's
20 operations and activities to the full extent authorized by law.

21 **Sec. 5.** An employer may do the following:

- 22 (1) Direct the work of an employee, except where otherwise
23 provided by law.
- 24 (2) Establish policy.
- 25 (3) Hire, promote, demote, transfer, assign, and retain an
26 employee in accordance with law and collective bargaining
27 agreements.
- 28 (4) Suspend or discharge an employee in accordance with law.
- 29 (5) Maintain the efficiency of governmental operations.
- 30 (6) Take action necessary to carry out the missions of the
31 police department and the fire department.
- 32 (7) Protect the fiscal soundness and assure the continuation of
33 vital public safety services.
- 34 (8) Take actions necessary to carry out the employer's
35 responsibilities in emergencies, including any of the following:
- 36 (A) Riot.
- 37 (B) Military action.
- 38 (C) Natural disaster.
- 39 (D) Civil disorder.

40 **Sec. 6.** The board shall investigate a petition that has been filed
41 with the board in accordance with rules adopted by the board
42 under IC 4-22-2 by:



(1) an employee organization alleging that thirty percent (30%) of the employees in the appropriate bargaining unit wish to be represented for collective bargaining purposes by an exclusive representative;

(2) an employer alleging that at least one (1) employee organization has presented a claim to be recognized as the exclusive representative in an appropriate bargaining unit; or

(3) an employee or a group of employees alleging that thirty percent (30%) of the employees assert that the designated exclusive representative is no longer the representative of the majority of employees in the bargaining unit.

Sec. 7. If the board has reasonable cause to believe that a question of representation exists, the board shall conduct a hearing within thirty (30) days after a petition is filed with the board. If the board finds upon the record of the hearing that a question of representation exists, the board shall do the following:

(1) Direct an election by secret ballot within thirty (30) days after the hearing.

(2) Certify the results within ten (10) days after the election.

Sec. 8. The parties may waive a hearing for a consent election.

Sec. 9. The board shall determine who is eligible to vote in the election and shall establish rules governing the election, subject to the following conditions:

(1) An employee organization must be designated by more than ten percent (10%) of the employees in the unit to be placed on the ballot.

(2) If none of the choices on the ballot receives a majority in an election but a majority of all votes cast are for representation by some employee organization, the board shall conduct a runoff election.

(3) An employee organization that receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative.

Sec. 10. An election may not be directed in a bargaining unit or in a subdivision of a bargaining unit within which a valid election has been held in the preceding twelve (12) months.

Sec. 11. Notwithstanding sections 6 through 10 of this chapter, an employer shall recognize as the exclusive representative of the employees within an appropriate bargaining unit an employee organization that presents to the employer evidence that the employee organization represents a majority of the employees within the unit, unless an employee organization or a group of



employees representing employees within the bargaining unit files a written objection to recognition with the employer or the board.

Sec. 12. In the absence of an objection, the board is not required to hold a hearing or to direct an election.

Sec. 13. Before recognizing an exclusive representative under section 11 of this chapter, the employer must post a written public notice of the employer's intention to recognize the employee organization as the exclusive representative of the employees within the unit. The notice must be posted for at least thirty (30) days immediately preceding recognition.

Sec. 14. In a case:

- (1) involving a historical pattern of recognition; and
- (2) where the employer has recognized an employee organization as the sole and exclusive bargaining agent for an existing bargaining unit;

the board shall find that the employees in the bargaining unit are represented by that employee organization and recognize the employee organization as the exclusive representative.

Sec. 15. A determination made under this chapter that an employee organization has been chosen as the exclusive representative by a majority of the employees in an appropriate bargaining unit is subject to judicial review under IC 36-8-22-12 through IC 36-8-22-22. The record of the determination of the appropriate bargaining unit and the exclusive representative may be a part of the transcript of a proceeding under this section.

Sec. 16. An employer shall, on receipt of a written authorization from an employee subject to this chapter, do the following:

- (1) Deduct from the pay of the employee the dues, fees, or assessments designated or certified by the appropriate officer of an employee organization.
- (2) Remit those amounts to the employee organization.

Sec. 17. A collective bargaining agreement with an exclusive representative may include a provision requiring an employee covered by the agreement who is not a member of the organization to pay a proportionate share of the costs of the collective bargaining process, contract administration, and matters affecting wages, hours, and conditions of employment. This proportionate share may not exceed the amount of dues uniformly required of members.

Sec. 18. The organization shall certify to an employer the amount constituting each nonmember employee's proportionate share. The employer shall deduct the proportionate share payment



1 from the earnings of a nonmember employee and pay the amount
2 to the employee organization.

3 **Sec. 19. Only the exclusive representative may negotiate**
4 **provisions in a collective bargaining agreement providing for the**
5 **payroll deduction of any of the following:**

- 6 (1) Labor organization dues.
- 7 (2) Fair share payment.
- 8 (3) Initiation fees.
- 9 (4) Assessments.

10 **Sec. 20. Except as provided in sections 17 and 18 of this chapter,**
11 **deductions may be made only upon an employee's written**
12 **authorization and shall be continued until:**

- 13 (1) revoked in writing; or
- 14 (2) the termination date of an applicable collective bargaining
- 15 agreement.

16 **Sec. 21. An agreement containing a proportionate share**
17 **agreement must safeguard the right of nonassociation based upon**
18 **bona fide religious tenets of an employee. An affected employee**
19 **may be required to pay an amount equal to the employee's**
20 **proportionate share, determined under a lawful proportionate**
21 **share agreement, to a nonreligious charitable organization agreed**
22 **upon by the employee and the exclusive representative to which the**
23 **employee would otherwise pay the service fee.**

24 **Sec. 22. If an affected employee and the exclusive representative**
25 **are unable to agree on a payment under section 21 of this chapter,**
26 **the board may establish an approved list of charitable**
27 **organizations to which the payments may be made.**

28 **Sec. 23. It is an unfair labor practice for an employer to do any**
29 **of the following:**

- 30 (1) Interfere with, restrain, or coerce an employee in the
- 31 exercise of the rights guaranteed in this chapter, IC 36-8-22,
- 32 IC 36-8-23, or IC 36-8-24.
- 33 (2) Dominate, interfere, or assist in the formation or
- 34 administration of an employee organization or contribute
- 35 financial or other support to the employee organization.
- 36 (3) Discriminate in regard to:
- 37 (A) hiring practices;
- 38 (B) tenure of employment; or
- 39 (C) a term or condition of employment;
- 40 to encourage or discourage membership in an employee
- 41 organization.
- 42 (4) Discharge or otherwise discriminate against an employee



because that employee has:

- (A) filed a complaint, an affidavit, or a petition; or
- (B) given information or testimony under this chapter or IC 36-8-22.
- (5) Refuse to bargain collectively in good faith with an exclusive representative concerning the following:
 - (A) Wages.
 - (B) Rates of pay.
 - (C) Hours.
 - (D) Working conditions.
 - (E) All other terms or conditions of employment.
- (6) Fail or refuse to comply with this chapter, IC 36-8-22, IC 36-8-23, or IC 36-8-24.

Sec. 24. It is an unfair labor practice for an employee organization to do any of the following:

- (1) Interfere with, restrain, or coerce:
 - (A) an employee in the exercise of the rights guaranteed in this chapter, IC 36-8-22, IC 36-8-23, or IC 36-8-24; or
 - (B) an employer in the selection of an exclusive representative for collective bargaining or the adjustment of grievances.
- (2) Cause or attempt to cause an employer to discriminate against an employee in violation of section 23 of this chapter.
- (3) Refuse to bargain collectively in good faith with an employer if the employee organization is the exclusive representative.
- (4) Engage in a strike.
- (5) Fail to comply with this chapter, IC 36-8-22, IC 36-8-23, or IC 36-8-24.
- (6) Perform a practice listed in IC 20-7.5-1-7.

Sec. 25. It is not an unfair labor practice for an employer to confer with an employee without loss of time or pay by the employee during working hours.

Sec. 26. It is not an unfair labor practice for an employee organization to adopt rules concerning the acquisition or retention of membership in the employee organization.

SECTION 4. IC 36-8-22 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:

Chapter 22. Collective Bargaining Between Local Government Employers and Police Officers and Firefighters; Complaints

Sec. 1. (a) An employer, employee, employee organization, or



1 exclusive representative who is aggrieved by an unfair labor
2 practice may file a complaint with the board.

3 (b) The board shall serve a copy of the complaint on the person
4 complained of and notify the respondent of the date and place of a
5 hearing on the complaint.

6 Sec. 2. (a) A hearing may not be less than five (5) days or more
7 than thirty (30) days after a complaint is served.

8 (b) A notice of a hearing may not be issued based upon an unfair
9 labor practice occurring more than ninety (90) days before the
10 filing of the complaint, unless the complainant was prevented from
11 filing the complaint because of service in the armed forces. In that
12 event, the ninety (90) day period is computed from the date of the
13 complainant's discharge.

14 Sec. 3. (a) A complaint may be amended by the complainant at
15 any time before the issuance of an order by the board if the
16 respondent is not unfairly prejudiced.

17 (b) The respondent shall file an answer to the original or
18 amended complaint. The complainant and the respondent are
19 parties and are entitled to appear in person or otherwise give
20 testimony at the hearing. At the discretion of the board, an
21 interested person may be allowed to intervene in the hearing and
22 present testimony.

23 Sec. 4. The board is not bound by the rules of evidence in
24 conducting a hearing. Testimony received at a hearing shall be
25 reduced to writing and filed with the board. After receiving the
26 testimony, the board may take further testimony or hear
27 arguments upon notice to the parties.

28 Sec. 5. (a) The board shall make a determination based on the
29 preponderance of evidence received.

30 (b) If the board determines that the respondent was or is
31 engaged in an unfair labor practice, the board shall state the
32 findings of fact and serve on the respondent an order requiring
33 that the respondent cease the unfair labor practice and take
34 affirmative actions, including reinstatement of an employee with
35 or without back pay, to carry out IC 36-8-21, IC 36-8-23,
36 IC 36-8-24, and this chapter. The order may further require that
37 the respondent make reports showing the extent of the
38 respondent's compliance with the order.

39 Sec. 6. If the board determines that a respondent:

- 40 (1) did not engage in; or
41 (2) is not engaging in;

42 an unfair labor practice, the board shall state the findings of fact



1 and dismiss the complaint.

2 **Sec. 7.** A hearing may be conducted by a member of the board
3 or by a hearing examiner or an agency designated by the board,
4 instead of the full board. However, after the hearing the member,
5 hearing examiner, or agency shall serve on the parties and file with
6 the board proposed findings and a recommended order.

7 **Sec. 8.** If an exception is not filed by a party:

- 8 (1) within twenty (20) days after service on the parties; or
9 (2) within a period authorized by the board;

10 the recommended order becomes the order of the board.

11 **Sec. 9.** If an exception is filed, the board shall grant review if the
12 board determines that the exception raises a substantial issue of
13 fact or law.

14 **Sec. 10.** If the board determines that the exception does not raise
15 a substantial issue of fact or law, the recommended order becomes
16 the order of the board.

17 **Sec. 11.** An order of the board under sections 7 through 10 of
18 this chapter is a final order and binding on the parties to the
19 complaint, subject to judicial review under sections 12 through 22
20 of this chapter.

21 **Sec. 12.** Not later than thirty (30) days after service of the
22 board's order under:

- 23 (1) IC 36-8-21-6 through IC 36-8-21-15; or
24 (2) sections 1 through 11 of this chapter;

25 on the complainant and respondent, the board or the complainant
26 may petition the circuit or superior court of a county in which the
27 unit is located for the enforcement of the board's order and for
28 appropriate relief.

29 **Sec. 13.** A party aggrieved by the board's order may petition the
30 court for a review of the order and for appropriate relief. If a
31 petition is not filed within the thirty (30) day period, the order may
32 not be reviewed. The board shall then file a petition with the court
33 to enforce the order.

34 **Sec. 14.** The commencement of proceedings after the filing of a
35 petition does not, unless specifically ordered by the court, operate
36 as a stay of the board's order.

37 **Sec. 15.** After a petition is filed, the court shall have notice
38 served upon the parties of the petition and send a copy to the
39 board.

40 **Sec. 16.** An objection that was not made at the hearing may not
41 be considered by the court, unless the failure to make the objection
42 is excused because of extraordinary circumstances.



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1 **Sec. 17. If either party to the petition applies to the court for**
 2 **leave to introduce additional evidence and shows to the satisfaction**
 3 **of the court that:**

4 (1) the additional evidence is material; and

5 (2) there were reasonable grounds for the failure to introduce
 6 the evidence in the hearing;

7 the court may order the additional evidence to be taken by the
 8 board and made a part of the record.

9 **Sec. 18. The board:**

10 (1) may modify the findings of fact by reason of the additional
 11 evidence; and

12 (2) shall file the modified findings and the recommendations
 13 for a modification or setting aside of the original order with
 14 the court.

15 **Sec. 19. The petitioner shall file a record of the hearing, certified**
 16 **by the board, with the court. Until a record of the hearing is filed,**
 17 **the board may, at any time upon reasonable notice, modify or set**
 18 **aside all or part of a finding or an order made or issued by the**
 19 **board.**

20 **Sec. 20. After the record is filed, the jurisdiction of the court to**
 21 **modify, set aside, or enforce a board's order and to grant other**
 22 **appropriate relief is exclusive, and the court's judgment and decree**
 23 **are final, subject to review in accordance with the rules of court.**

24 **Sec. 21. Petitions filed under section 12 of this chapter shall be**
 25 **heard not later than sixty (60) days after the petitions are docketed.**
 26 **The petition takes precedence over all other civil matters except**
 27 **earlier matters of the same character.**

28 **Sec. 22. The original or modified findings of fact by the board**
 29 **with respect to questions of fact, if supported by substantial**
 30 **evidence on the record considered as a whole, are conclusive.**

31 **SECTION 5. IC 36-8-23 IS ADDED TO THE INDIANA CODE AS**
 32 **A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY**
 33 **1, 1999]:**

34 **Chapter 23. Collective Bargaining Between Local Government**
 35 **Employers and Police Officers and Firefighters; Mediation and**
 36 **Arbitration**

37 **Sec. 1. Employers and employees shall bargain collectively. The**
 38 **parties shall enter into a contract embodying the matters on which**
 39 **the parties have agreed during the collective bargaining process.**

40 **Sec. 2. A contract may not include provisions in conflict with**
 41 **any of the following:**

42 (1) A right or benefit established by federal or state law.



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1 (2) Employee rights described in this article.

2 (3) Employer rights described in this article.

3 Sec. 3. A collective bargaining contract may be in effect for
4 more than one (1) year.

5 Sec. 4. The contract must contain a grievance resolution
6 procedure that applies to all employees in the bargaining unit. This
7 procedure must provide for the final and binding arbitration of
8 disputes concerning the administration or interpretation of the
9 contract. The arbitration provisions of the contract are subject to
10 IC 34-57-1.

11 Sec. 5. Collective bargaining must begin by May 1 of a year in
12 which a collective bargaining agreement is to expire. The parties
13 shall inform the board of the results of collective bargaining.

14 Sec. 6. If the exclusive representative and the employer have not
15 agreed on a contract not later than forty-five (45) days after
16 collective bargaining begins, either party may:

17 (1) notify the board of the inability to reach an agreement;
18 and

19 (2) ask the board for mediation to begin.

20 Sec. 7. The board shall make a mediator available to the parties
21 at the board's expense within seven (7) days after the board is
22 notified under section 6 of this chapter.

23 Sec. 8. The mediator shall communicate with both the employer
24 and the exclusive representative and aid the employer and
25 exclusive representative in making a settlement so that the parties
26 may enter into a contract.

27 Sec. 9. If a dispute has not been resolved not later than
28 twenty-one (21) days after either party makes a request for
29 mediation under section 6 of this chapter, the employer or
30 exclusive representative shall submit a written request for
31 arbitration to the board.

32 Sec. 10. Not later than ten (10) days after the request must be
33 filed under section 9 of this chapter, the employer shall select a
34 member and the exclusive representative shall select a member to
35 a panel of arbitration. The employer and exclusive representative
36 shall advise each other and the board of the selections.

37 Sec. 11. Not later than seven (7) days after the request of either
38 party under section 9 of this chapter, the board shall select from
39 the employees' labor mediation roster five (5) persons as nominees
40 to serve as impartial arbitrators on the arbitration panel. Not later
41 than five (5) days after the selection, the parties shall each
42 alternately strike the names of two (2) of the nominees, with the

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1 first person to request a mediator under section 9 of this chapter
2 striking first.

3 Sec. 12. The remaining member and the members selected by
4 the employer and the exclusive representative constitute the panel.
5 The panel member not struck under section 11 of this chapter is
6 the chairperson of the arbitration panel.

7 Sec. 13. The chairperson of the arbitration panel shall schedule
8 a hearing to begin not later than fifteen (15) days after the panel's
9 membership is selected and give reasonable notice of the time and
10 place of the hearing to the parties. The hearing shall be held at the
11 location the board considers appropriate. The chairperson shall
12 preside over the hearing and take testimony.

13 Sec. 14. Oral or documentary evidence and other data
14 considered relevant by the arbitration panel may be received in
15 evidence. The hearing shall be informal and the rules of evidence
16 do not apply. A verbatim record of a hearing must be made. The
17 arbitrator shall arrange for the necessary recording service.
18 Transcripts may be ordered at the expense of the party ordering
19 the transcripts, but the transcripts are not necessary for a decision
20 by the arbitration panel.

21 Sec. 15. If a panel member is a public officer or employee, the
22 public officer or employee continues on the payroll of the employer
23 without loss of pay.

24 Sec. 16. A hearing conducted by an arbitration panel may be
25 adjourned periodically, but, unless otherwise agreed to by the
26 parties, must be concluded not later than thirty (30) days after the
27 date of commencement. Arbitration proceedings under this chapter
28 may not be interrupted or terminated by an unfair labor practice
29 charge filed by either party at any time.

30 Sec. 17. An arbitration panel may do the following:

- 31 (1) Administer oaths.
- 32 (2) Require the attendance of witnesses and the production of
33 evidence considered material to a just determination of an
34 issue in dispute.

35 Sec. 18. A panel may issue a subpoena for purposes of section 17
36 of this chapter.

37 Sec. 19. If:

- 38 (1) a person refuses to obey a subpoena or to be sworn or to
39 testify; or
- 40 (2) a witness, a party, or an attorney is guilty of contempt at
41 a hearing;

42 the arbitration panel may request a circuit court with jurisdiction



1 where the hearing is held to issue an appropriate order.

2 Sec. 20. The failure to obey the order may be punished by the
3 court as contempt.

4 Sec. 21. Before an award is made, the chairperson of an
5 arbitration panel may remand the dispute to the parties for further
6 collective bargaining for a period not to exceed two (2) weeks. If
7 the dispute is remanded, the time provisions of this chapter are
8 extended for a period equal to that of the remand. The chairperson
9 of the arbitration panel shall notify the board of a remand under
10 this section.

11 Sec. 22. Not later than the conclusion of a hearing held under
12 section 13 of this chapter, the arbitration panel shall identify the
13 economic issues in dispute and direct each of the parties to submit
14 to the arbitration panel and to each other, within the time limit the
15 panel prescribes, each party's last offer of settlement on each
16 economic issue. The determination of an arbitration panel is
17 conclusive concerning the issues in dispute and the issues that are
18 economic.

19 Sec. 23. The arbitration panel shall make written findings of fact
20 and adopt a written opinion not later than thirty (30) days after the
21 conclusion of a hearing or any further additional periods to which
22 the parties agree. The arbitration panel shall mail a copy of the
23 opinion to the parties, the representatives of the parties, and the
24 board.

25 Sec. 24. The arbitration panel shall adopt the last offer of
26 settlement on an issue by issue basis that, in the opinion of the
27 arbitration panel, more nearly complies with the applicable factors
28 prescribed in section 25 of this chapter with regard to economic
29 issues. The findings, opinions, and order as to all other issues must
30 also be based upon the applicable factors prescribed in section 25
31 of this chapter.

32 Sec. 25. If there is no agreement between the parties, or if there
33 is an agreement but the parties have begun negotiations or
34 discussions for a new agreement or an amendment of the existing
35 agreement, and wage rates or other conditions of employment
36 under the proposed new or amended agreement are in dispute, the
37 arbitration panel shall base the findings, opinions, and order upon
38 the following factors:

- 39 (1) The lawful authority of the employer.
- 40 (2) Stipulations of the parties.
- 41 (3) The interests and welfare of the public and the financial
- 42 ability of the employer to meet the costs.



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(4) Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of employees performing similar services and with other employees generally in comparable communities.

(5) The average consumer prices for goods and services.

(6) The overall compensation currently received by the employees, including the following:

(A) Direct wage compensation, vacations, holidays, and other excused time.

(B) Insurance, pension, medical, and hospitalization benefits.

(C) The continuity and stability of employment.

(7) Changes in any of the circumstances during the arbitration proceedings.

(8) Other factors normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, factfinding, or arbitration between parties in public or private employment.

Sec. 26. If a fiscal year begins:

(1) after the initiation of arbitration procedures; and

(2) before the arbitration decision or enforcement of the decision;

this occurrence does not render a dispute moot or impair the jurisdiction or authority of the arbitration panel or the decision.

Sec. 27. An increase in rates of compensation awarded by an arbitration panel is effective at the beginning of the employer's fiscal year beginning on or after the date of the arbitration award.

Sec. 28. If a fiscal year begins after the initiation of arbitration procedures, section 27 of this chapter does not apply. An awarded increase may be retroactive to the beginning of the fiscal year.

Sec. 29. The parties may, by stipulation, amend or modify an award of arbitration.

Sec. 30. An order of an arbitration panel is reviewable, upon petition by either the employer or the exclusive representative, by the circuit court with jurisdiction in the county in which the dispute arose or in which a majority of the affected employees reside, but only if:

(1) the arbitration panel was without authority or exceeded the panel's authority;

(2) the order is arbitrary or capricious; or



(3) the order was procured by fraud, collusion, or unlawful means.

Sec. 31. A petition for review under section 30 of this chapter must be filed with the circuit court not later than ninety (90) days after the issuance of the arbitration order. The pendency of the proceeding for review does not automatically stay the order of the arbitration panel.

Sec. 32. If the court finds the appeal or petition frivolous, the party against whom the final decision of the court is adverse shall pay reasonable attorney's fees and costs to the successful party.

Sec. 33. If the court's decision affirms the award of money, the award, if retroactive, bears interest at the rate of twelve percent (12%) annually from the effective retroactive date.

Sec. 34. During the pendency of proceedings before an arbitration panel, currently applicable wages, hours, and other conditions of employment may not be changed by either party without the consent of the other. However, a party may consent to a change without prejudice to the party's rights or position under IC 36-8-21 or this chapter.

Sec. 35. An employee covered by IC 36-8-21 and this chapter may not withhold services.

Sec. 36. An employer may not lock out or prevent an employee from performing services.

Sec. 37. (a) All terms decided upon by an arbitration panel must be included in an agreement to be submitted to the employer's legislative body for ratification and:

- (1) adoption by ordinance if the unit is a county or municipality; or
- (2) passage of a resolution if the unit is a township.

(b) The legislative body of the unit shall review each term decided by an arbitration panel.

Sec. 38. If the legislative body of a unit does not reject at least one (1) term of an arbitration panel's decision by a vote of at least sixty percent (60%) of all the members of the body within twenty (20) days after the issuance of the decision, the term becomes a part of the collective bargaining agreement.

Sec. 39. If the legislative body of a unit rejects at least one (1) term of the arbitration panel's decision, the legislative body must issue written reasons for the rejection of each term to the parties within twenty (20) days after the rejection. The parties shall then return to the arbitration panel within thirty (30) days after the issuance of the reason for rejection for further proceedings and the



1 issuance of a supplemental decision with respect to the rejected
2 terms.

3 **Sec. 40.** A supplemental decision by an arbitration panel or
4 other decision maker selected by the parties must be submitted to
5 the legislative body of a unit for ratification in accordance with
6 sections 37 through 39 of this chapter.

7 **Sec. 41.** The voting requirements of section 38 of this chapter
8 apply to all disputes submitted to arbitration, notwithstanding
9 inconsistent voting requirements contained in a collective
10 bargaining agreement between the parties.

11 **Sec. 42.** The employer shall pay all reasonable costs of a
12 supplemental proceeding, including the exclusive representative's
13 reasonable attorney's fees, as established by the board.

14 **Sec. 43.** The employer and exclusive representative may agree
15 to submit unresolved disputes concerning wages, hours, terms, and
16 conditions of employment to an alternative form of impasse
17 resolution without regard to this chapter.

18 **Sec. 44.** Except as provided in sections 7 and 42 of this chapter,
19 the entire cost of procedures under this chapter as determined by
20 the board shall be paid equally by the parties. The board shall
21 establish a complete procedure for the collection and payment of
22 the cost.

23 **Sec. 45.** After the exhaustion of an arbitration mandated by this
24 chapter or procedures mandated by a collective bargaining
25 agreement, a civil action for the violation of an agreement between
26 an employer and a labor organization representing employees may
27 be brought by either party to the agreement in the circuit or
28 superior court of a county in which the employer:

29 (1) transacts business; or

30 (2) has the employer's principal office.

31 **SECTION 6.** IC 36-8-24 IS ADDED TO THE INDIANA CODE AS
32 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
33 1, 1999]:

34 **Chapter 24. Collective Bargaining Between Local Government**
35 **Employers and Police Officers and Firefighters; Miscellaneous**
36 **Provisions**

37 **Sec. 1.** If IC 36-8-21, IC 36-8-22, IC 36-8-23, or this chapter
38 conflicts with an Indiana statute, rule, or executive order relating
39 to wages, hours, and conditions of employment and employment
40 relations, IC 36-8-21, IC 36-8-22, IC 36-8-23, or this chapter
41 prevails.

42 **Sec. 2.** For purposes of IC 36-1-3-6:



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- (1) IC 36-8-21;
- (2) IC 36-8-22;
- (3) IC 36-8-23; and
- (4) this chapter;

provide the exclusive manner for a unit to exercise the power to bargain collectively with the unit's employees.

Sec. 3. An employee or exclusive representative may not participate in a strike against an employer.

Sec. 4. An employee engaging in a strike is subject to discharge by the employer as provided in IC 36-8-3-4.

Sec. 5. An exclusive representative that engages in or sanctions a strike loses the right to represent the employees for one (1) year from the date of the action.

Sec. 6. An employer may not pay an employee for days the employee was engaged in a strike.

SECTION 7. [EFFECTIVE JULY 1, 1999] (a) This act does not:

- (1) apply to or abrogate a contract or an agreement in effect on June 30, 1999; or
- (2) preclude arbitration on a provision in the contract or agreement.

(b) This SECTION expires July 1, 2002.

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